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EXAMINER				
UBER, NATHAN C				
ART UNIT		PAPER NUMBER		
3622				
NOTIFICATION DATE		DELIVERY MODE		
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

pto-sl@huschblackwell.com

Office Action Summary

Application No.

10/599,923

Applicant(s)

LEE, WOO SUNG

Examiner

NATHAN C. UBER

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Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 February 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-8,10,12,14-16,21 and 22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-8,10,12,14-16,21 and 22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Status of Claims

1. This action is in reply to the amendment filed on 28 February 2009.
2. Claims 1, 5-7, 10, 14, 21 and 22 have been amended.
3. Claim 2 has been canceled.
4. Claims 1, 3-8, 10, 12, 14-16 and 21-22 are currently pending and have been examined.

Continued Examination Under 37 CFR 1.114

5. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 28 February 2009 has been entered.

Claim Rejections - 35 USC § 112

6. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

7. Claims 1 and 10 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claims contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The claims disclose that the *determining the first winning bid is performed by a server which includes a processor and a memory*. This "server" was not part of the original disclosure. The only server

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in the original disclosure is a search engine web server disclosed on page 7; the web search server in the specification does not determine winning bids as claimed.

8. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

9. Claim 7 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 7 recites the limitation "the predetermined transfer condition." There is insufficient antecedent basis for this limitation in the claim. For the purposes of this Examination the predetermined transfer condition of claim 7 will be interpreted to mean a status of the ad listing that is affected by the advertiser; i.e. advertiser cancels the listing or lets the listing be suspended for insufficient funds.
10. Claim 14 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim elements "means for determining," "means for defining," "means for processing," and "means for transferring" are means plus function limitations that invoke 35 U.S.C. 112, sixth paragraph. However, the written description fails to disclose the corresponding structure for the "means for determining" because the specification is silent regarding "determining means." Further with regard to "means for defining," "means for processing," and "means for transferring" the specification states only that each means is a "device" (see pages 9, 12 and 14 respectively). A generic device is insufficient because one having ordinary skill in the art would not have known at the time of the invention the specific structure Applicant is claiming. Rather one of ordinary skill in the art would likely use a computer with specific programming/configuration to achieve the functions. However, Applicant also discloses a computer with particular configuration or programs elsewhere in the disclosure; thus the "devices" must be different from a generic computer. Further based on Applicant's specification each means constitutes a separate device. In the case of the transferring means device, Applicant claims that the "device" transfers a right to display an

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advertisement... One having ordinary skill in the art would not have known at the time of the invention what device could be used to transfer something that is neither tangible nor data.

Applicant is required to:

- (a) Amend the claim so that the claim limitation will no longer be a means plus function limitation under 35 U.S.C. 112, sixth paragraph; or
- (b) Amend the written description of the specification such that it expressly recites what structure, material, or acts perform the claimed function without introducing any new matter (35 U.S.C. 132(a)).

If applicant is of the opinion that the written description of the specification already implicitly or inherently discloses the corresponding structure, material, or acts so that one of ordinary skill in the art would recognize what structure, material, or acts perform the claimed function, applicant is required to clarify the record by either:

- (a) Amending the written description of the specification such that it expressly recites the corresponding structure, material, or acts for performing the claimed function and clearly links or associates the structure, material, or acts to the claimed function, without introducing any new matter (35 U.S.C. 132(a)); or
- (b) Stating on the record what the corresponding structure, material, or acts, which are implicitly or inherently set forth in the written description of the specification, perform the claimed function. For more information, see 37 CFR 1.75(d) and MPEP 2181 and 608.01(0).

For the purposes of this examination, Examiner interprets the "means" to be purely software modules that are executed by a single computer consistent with the specification (see page 32, stating that "the hardware devices can be configured to operate as one or more software modules").

11. Claims 21 and 22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The *storage media* of the claims is not defined in the specification. On page 32 of

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the specification Applicant discloses a "main storage unit" and a "mass storage unit" and page 31 discloses examples of computer readable recording media. For the purpose of this examination Examiner will interpret the *storage media* of the claim to be the mass storage unit noted on page 32 and in figure 13.

Claim Rejections - 35 USC § 102

12. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

13. **Examiner's Note:** The Examiner has pointed out particular references contained in the prior art of record within the body of this action for the convenience of the Applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply. Applicant, in preparing the response, should consider fully the entire reference as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the Examiner.
14. Claims 1, 3-8, 10, 12, 14-16 and 21-22 are rejected under 35 U.S.C. 102(b) as being anticipated by Davis et al., (U.S. 6,269,361 B1).

Claims 1 and 21:

Davis, as shown, discloses the following limitations:

- *defining a plurality of advertisement locations for placement of advertisements in association with keywords, at least one of said advertisement locations including a plurality of unit display zones in association with a predetermined keyword* (see at least column 18, lines 4-21 and figure 7, a plurality of ad display zones where ads associated with the

keyword "zip drives" are placed which constitutes an advertisement location; note Examiner interprets this claim limitation in light of figure 3 of Applicant's specification and its accompanying disclosure),

- *receiving at least one bid data corresponding to a first unit display zone from at least one advertiser, said first unit display zone being one of the plurality of unit display zones associated with said predetermined keyword, each of said at least one bid data indicating a bid price (see at least column 19, lines 8-17 and figure 9, advertiser may specifically place a bid for the first position for a particular keyword, the bid comprising the bid price; see also at least column 12, lines 28-29, bid and keyword),*
- *determining a first winning bid based at least in part on a bid price wherein the determining the first winning bid is performed by a server which includes a processor and a memory (see at least column 9, lines 42-49, the higher bids are perceived and awarded the higher placement zones),*
- *storing said bid data including the first winning bid in the memory (see at least column 19, lines 8-17 and figure 9, advertiser may view current bid prices, inherently the bids are stored; see also column 12, lines 29-39, bid information stored and organized),*
- *determining whether a first advertiser's right to display an advertisement on said first unit display zone is to be terminated, the a first advertiser submitting the first winning bid (see at least column 14, lines 5-9, listings are suspended, i.e. ads are no longer presented when the advertiser account balance is too low),*
- *upon determining that the first advertiser's right to display an advertisement on said first unit display zone is to be terminated retrieving at least a portion of said stored bid data from the memory (Examiner notes that claim scope is not limited by claim language that suggests or makes optional but does not*

require steps to be performed, or by claim language that does not limit a claim to a particular structure (MPEP § 2111.04). Accordingly, no patentable weight was given to the following claim language following “upon determining...” because this determination is not required and the broadest reasonable interpretation of the claim is that the determination does not occur; see at least column 20, lines 14-31, after bid is deleted and ad is not longer presented, the bid data is retained),

- *determining a second winning bid without soliciting new bids, based at least in part on a bid price among said retrieved bid data for placement of an advertisement on said first unit display zone in association with search result list generated in response to a search query associated with said predetermined keyword, said retrieved bid data including previously entered bids for said first unit display zone (see at least column 9, lines 42-49, the higher bids are perceived and awarded the higher placement zones, inherently is the highest bid disappears, then the next highest bid becomes the current highest bid; see also at least column 19, lines 8-17 and figure 9, advertiser may specifically place a bid for the first position for a particular keyword, the bid comprising the bid price; see also at least column 12, lines 28-29, bid and keyword),*
- *transferring said right to display an advertisement on said first unit display zone from said first advertiser to a second advertiser which has submitted said second winning bid (see at least column 9, lines 42-49, the higher bids are perceived and awarded the higher placement zones, inherently is the highest bid disappears, then the next highest bid becomes the current highest bid),*
- *displaying an advertisement of the second advertiser on said first unit display zone (see at least column 9, lines 42-49, the higher bids are perceived and*

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awarded the higher placement zones, inherently is the highest bid disappears, then the next highest bid becomes the current highest bid),

- *upon termination of the first advertiser's right to display an advertisement on said first unit display zone, performing a re-bid process for a second unit display zone wherein a winning bid for the second unit display zone is determined based at least in part on a bid price among previously stored bids for the second unit display zone including the first advertiser's bid if the first advertiser's bid was made for the second unit display zone as well as the first unit display zone* (Examiner notes that claim scope is not limited by claim language that suggests or makes optional but does not require steps to be performed, or by claim language that does not limit a claim to a particular structure (MPEP § 2111.04). Accordingly, no patentable weight was given to the following claim language following "*upon determining...*" because this determination is not required and the broadest reasonable interpretation of the claim is that the determination does not occur; see at least column 19, lines 38-58, changing the position of the ad in the result list).

Claim 3:

Davis, as shown, discloses the following limitation:

- *if said second advertiser has submitted a plurality of winning bids corresponding to a plurality of said unit display zones associated with said predetermined keyword, one unit display zone is assigned to said second advertiser in accordance with at least one predetermined display priority condition* (Examiner notes that claim scope is not limited by claim language that suggests or makes optional but does not require steps to be performed, or by claim language that does not limit a claim to a particular structure (MPEP § 2111.04). Accordingly, no patentable weight was given to claim 3 because the broadest reasonable interpretation of the claim is that the *if*

condition is not satisfied; see at least column 18, lines 23-26, winning bids, i.e. bids with the same bid amount for the same keyword, are awarded preferred placement based on which bid was received first, i.e. a priority condition).

Claim 4:

Davis, as shown, discloses the following limitation:

- *the predetermined display priority condition is determined based at least in part on review of cost-per-click pricing model* (see at least column 9, lines 42-43, higher bid gets better placement or first priority for a given position; see also at least column 10, lines 2-6, paid listing comprise a cost per click).

Claim 15

Davis, as shown, discloses the following limitation:

- *the predetermined display priority condition is determined based at least in part on review of selection by said second advertiser* (see at least figure 9, line advertisers can view bids and placements for each ad).

Claim 5:

Davis, as shown, discloses the following limitation:

- *wherein said bid data include payable fee per single click, and the step of determining a second winning bid comprises the step of: determining a second winning bid in accordance with said payable fee per single click* (see at least column 9, lines 42-43, higher bid gets better placement or first priority for a given position; see also at least column 10, lines 2-6, paid listing comprise a cost per click).

Claim 6:

Davis, as shown, discloses the following limitation:

- *ordering said stored bid data in accordance with payable fee per single click, said payable fee per single click being included in said bid data, wherein the*

step (g) of determining a second winning bid determines said second winning bid in accordance with the order of said bid data (see at least figure 7, ordering the ads in accordance with bid price; see also at least column 19, lines 8-17 and figure 9, advertiser may specifically place a bid for the first position for a particular keyword, the bid comprising the bid price).

Claim 7:

Davis, as shown, discloses the following limitation:

- the predetermined transfer condition is associated with bid data corresponding to the first unit display zone, which has been newly submitted*
- the step (g) of determining a second winning bid comprises the steps of ordering said stored bid data and re-ordering said stored bid data if new bid data has been submitted determining a second winning bid winning bid in accordance with the order of said bid data (see at least column 20, lines 14-31, after bid is deleted and ad is not longer presented, the bid data is retained; see also at least column 9, lines 42-49, the higher bids are perceived and awarded the higher placement zones, inherently is the highest bid disappears, then the next highest bid becomes the current highest bid)*

Claim 8:

Davis, as shown, discloses the following limitation:

- wherein the predetermined transfer condition is associated with an expiration of a predetermined contract for the search listing (see at least column 14, lines 5-9, listings are suspended, i.e. ads are no longer presented when the advertiser account balance is too low).*

Claims 10 and 22:

Davis, as shown, discloses the following limitations:

- receiving a plurality of bids for a particular placement position of advertisement in association with a predetermined keyword, said each bid*

indicating a bid price and an advertisement (see at least column 9, lines 19-41, bids are received for keywords from advertisers),

- *determining a first winning bid based at least in part on a bid price wherein the determining the first winning bid is performed by a server which includes a processor* (see at least column 9, lines 42-49, the higher bids are perceived and awarded the higher placement zones),
- *storing said bids including the first winning bid in a memory* (see at least column 19, lines 8-17 and figure 9, advertiser may view current bid prices, inherently the bids are stored; see also column 12, lines 29-39, bid information stored and organized),
- *determining whether a first advertiser's right to display an advertisement on said particular placement position is to be terminated, the first advertiser which submitting the first winning bid* (see at least column 14, lines 5-9, listings are suspended, i.e. ads are no longer presented when the advertiser account balance is too low),
- *upon determining that the first advertiser's right to display an advertisement on said first unit display zone is to be terminated, selecting, based at least in part on review of bid price, a second winning bid without soliciting new bids among said stored bids for said particular placement position of advertisement in association with said predetermined keyword* (Examiner notes that claim scope is not limited by claim language that suggests or makes optional but does not require steps to be performed, or by claim language that does not limit a claim to a particular structure (MPEP § 2111.04). Accordingly, no patentable weight was given to the following claim language following "upon determining..." because this determination is not required and the broadest reasonable interpretation of the claim is that the determination does not occur; see at least column 20, lines 14-31, after bid is

deleted and ad is not longer presented, the bid data is retained; see also at least column 9, lines 42-49, the higher bids are perceived and awarded the higher placement zones, inherently is the highest bid disappears, then the next highest bid becomes the current highest bid; see also at least column 19, lines 8-17 and figure 9, advertiser may specifically place a bid for the first position for a particular keyword, the bid comprising the bid price),

- *transferring said right to display an advertisement on said particular placement position in association with said predetermined keyword from said first advertiser to a second advertiser who has submitted said second winning bid* (see at least column 9, lines 42-49, the higher bids are perceived and awarded the higher placement zones, inherently is the highest bid disappears, then the next highest bid becomes the current highest bid),
- *displaying an advertisement of the second advertiser on said particular placement position* (see at least column 9, lines 42-49, the higher bids are perceived and awarded the higher placement zones, inherently is the highest bid disappears, then the next highest bid becomes the current highest bid).

Claim 12:

Davis, as shown, discloses the following limitation:

- *if said second advertiser wins bidding for more than one placement position of advertisement in association with said predetermined keyword, one placement position of advertisement in association with said predetermined keyword is assigned to said second advertiser in accordance with a predetermined condition, and wherein said predetermined condition is determined based at least in part on review of cost-per-click pricing model* (Examiner notes that claim scope is not limited by claim language that suggests or makes optional but does not require steps to be performed, or by claim language that does not limit a claim to a particular structure (MPEP §

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2111.04). Accordingly, no patentable weight was given to claim 3 because the broadest reasonable interpretation of the claim is that the *if* condition is not satisfied; see at least column 18, lines 23-26, winning bids, i.e. bids with the same bid amount for the same keyword, are awarded preferred placement based on which bid was received first, i.e. a priority condition; see also at least column 9, lines 42-43, higher bid gets better placement or first priority for a given position; see also at least column 10, lines 2-6, paid listing comprise a cost per click).

Claim 16:

Davis, as shown, discloses the following limitation:

- *if said second advertiser wins bidding for more than one placement position of advertisement in association with said predetermined keyword, only one placement position of advertisement in association with said predetermined keyword is assigned to said second advertiser in accordance with a predetermined condition, and wherein said predetermined condition is determined based at least in part on review of selection by said second advertiser* (Examiner notes that claim scope is not limited by claim language that suggests or makes optional but does not require steps to be performed, or by claim language that does not limit a claim to a particular structure (MPEP § 2111.04). Accordingly, no patentable weight was given to claim 3 because the broadest reasonable interpretation of the claim is that the *if* condition is not satisfied; see at least column 18, lines 23-26, winning bids, i.e. bids with the same bid amount for the same keyword, are awarded preferred placement based on which bid was received first, i.e. a priority condition; see also at least column 9, lines 42-43, higher bid gets better placement or first priority for a given position; see also at least column 10, lines 2-6, paid listing comprise a cost per click).

Claim 14:

Davis, as shown, discloses the following limitation:

- *means for defining a plurality of advertisement locations for placement of advertisements in association with a keyword, at least one of said advertisement locations including a plurality of unit display zones in association with a predetermined keyword (see at least column 8, lines 32-34, account management server),*
- *a user interface configured for receiving at least one bidding corresponding to a first unit display zone associated with the predetermined keyword from at least one advertiser, each of the at least one bidding indicating a bid price (see at least column 8, lines 32-34, account management server; see also at least figure 9, a user interface),*
- *a memory, said memory storing bid data corresponding to the at least one bidding (see at least column 8, lines 32-34, account management server),*
- *means for processing bidding for said first unit display zone, said means for processing the bidding determining a first winning bid for said first unit display zone based at least in part on a bid price, said means for processing the bidding determining a second winning bid based at least in part on the bid price among said bid data for placement of an advertisement on the first unit display zone associated with the predetermined keyword, said bid data including previously entered bids for said first unit display zone (see at least column 8, lines 32-34, account management server),*
- *means for determining whether a first advertiser's right to display an advertisement on the first unit display zone is to be terminated, the first advertiser submitting the first winning bid (see at least column 8, lines 32-34, account management server),*

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- *means for transferring said right to display an advertisement on the first unit display zone from the first advertiser to a second advertiser who has submitted the second winning bid (see at least column 8, lines 32-34, account management server),*
- *wherein, upon termination of the first advertiser's right to display an advertisement on said first unit display zone, the means for determining performs a re-bid process for a second unit display zone wherein a winning bid for the second unit display zone is determined based at least in part on a bid price among previously stored bids including: the first advertiser's bid* (Examiner notes that claim scope is not limited by claim language that suggests or makes optional but does not require steps to be performed, or by claim language that does not limit a claim to a particular structure (MPEP § 2111.04). Accordingly, no patentable weight was given to the following claim language following "*upon determining...*" because this determination is not required and the broadest reasonable interpretation of the claim is that the determination does not occur; see at least column 19, lines 38-58, changing the position of the ad in the result list).

Response to Arguments

15. Applicant's arguments with respect to claim 1-8, 10 and 12-20 have been considered but are moot in view of the new ground of rejection.

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Conclusion

16. Any inquiry of a general nature or relating to the status of this application or concerning this communication or earlier communications from the Examiner should be directed to **Nathan C Uber** whose telephone number is **571.270.3923**. The Examiner can normally be reached on Monday-Friday, 8:30am-4:00pm EST. If attempts to reach the examiner by telephone are unsuccessful, the Examiner's supervisor, **Eric Stamber** can be reached at **571.272.6724**.
17. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://portal.uspto.gov/external/portal/pair> <<http://pair-direct.uspto.gov>>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at **866.217.9197** (toll-free).
18. Any response to this action should be mailed to:

Commissioner of Patents and Trademarks

P.O. Box 1450, Alexandria, VA 22313-1450

or faxed to **571-273-8300**.

19. Hand delivered responses should be brought to the **United States Patent and Trademark Office Customer Service Window**:

Randolph Building
401 Dulany Street
Alexandria, VA 22314.

/Nathan C Uber/ Examiner, Art Unit 3622
20 May 2009

/Arthur Duran/
Primary Examiner, Art Unit 3622